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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,676	04/30/2001	Richard L Pressley	12077US05	7887

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EXAMINER

UPTON, CHRISTOPHER

ART UNIT PAPER NUMBER

1724

DATE MAILED: 08/01/2002

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

763676

Applicant(s)

Pressley et al

Examiner

Upstn

Group Art Unit

1724

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 6/10/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 18-24 is/are pending in the application.
- Of the above claim(s) 21 and 22 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 18-20, 23 and 24 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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1. Newly submitted claims 21 and 22 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Claims 18-20, 23 and 24 are drawn to a method and apparatus for controlling a jet aerator by sensing a property, such as oxidation reduction potential, classified in class 210, subclass 614.
- II. Claims 21 and 22 are drawn to a method for controlling oxygen by oxidation reduction potential followed by a reduction in oxygen supply, classified in class 210, subclass 605.

The inventions are distinct, each from the other because:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as in a system having surface or diffused aeration. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21 and 22 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

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2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 18, 19 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zlokarnik et al, Okumura et al, Chang, or Kite in view of Bringle, Wickens et al, Hayes et al, Tsumura et al, or Okey et al.

Zlokarnik, Okumura, Chang and Kite disclose biological treatment with jet aeration of recirculated biosolids solution, substantially as claimed. The claims differ in recitation of monitoring and adjusting a physical property and adjusting the mixing of the solution with the gas. It is well known to use a physical property to control the oxygen in a biological treatment system, as exemplified by control by ORP disclosed by Hayes, Tsumura and Okey, or control of dissolved oxygen as exemplified by Bringle and Wickens. It would therefore have been obvious for one of ordinary skill in the art to monitor the ORP or dissolved oxygen of Zlokarnik, Okumura, Chang and Kite, to control the aeration process.

With respect to claim 24, which recites a concentrating step prior to treatment, it is submitted that Hayes discloses the treatment of sludge, which has been concentrated in a clarifier.

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4. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 18-20, 23 and 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 16 and 17 of U.S. Patent No. 6,203,701. Although the conflicting claims are not identical, they are not patentably distinct from each other because the treatment process may obviously be autothermal digestion.

6. Claims 18-20, 23 and 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,168,717. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim obviously comprises the process and apparatus of the instant claims. With respect to the recitation of monitoring of ORP, it is submitted that this is disclosed by the patent.

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7. Claims 18-20, 23 and 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 5,948,261. Although the conflicting claims are not identical, they are not patentably distinct from each other because the property monitored and adjusted may obviously be temperature. With respect to the recitation of monitoring of ORP, it is submitted that this is disclosed by the patent.

8. Claims 18-20, 23 and 24 are directed to an invention not patentably distinct from claims 1-8 of commonly assigned patent no. 5,948,261. Specifically, the property monitored and adjusted may obviously be temperature, and the recitation of monitoring of ORP is disclosed by the patent.

Commonly assigned patent no. 5,948,261, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee is required under 37 CFR 1.78(c) and 35 U.S.C. 132 to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter. Failure to comply with this requirement will result in a holding of abandonment of the application.

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A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g).

9. Claims 18-20, 23 and 24 are rejected under 35 U.S.C. 103(a) as being obvious over U. S. Patent No. 5,948,261.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by a showing of a date of invention for the instant application of any unclaimed subject matter prior to the effective U.S. filing date of the reference under 37 CFR 1.131, or by a showing that the inventions were commonly owned at the time of invention under 35 U.S.C. 103(c).

The property monitored and adjusted may obviously be temperature, and the monitoring of ORP is disclosed by the patent.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See

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MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Other references of interest include Hamamoto and Coleman.

12. Any inquiry concerning this communication should be directed to Christopher Upton at telephone number (703) 308-3741.



**CHRISTOPHER UPTON
PRIMARY EXAMINER**